

UNITED STATES DISTRICT COURT

DISTRICT OF DELAWARE

JEFFREY L. GRUWELL,

Plaintiff,

v.

CORRECTIONAL MEDICAL SERVICES, INC.

Defendant.

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C.A. No. 07-845 GMS

DEFENDANT CORRECTIONAL MEDICAL SERVICES, INC.'S
ANSWER TO COMPLAINT

Defendant Correctional Medical Services, Inc. ("CMS"), by and through its undersigned counsel, for its Answer to Plaintiff's Complaint (D.I. 2), states as follows:

To the extent the allegations of Plaintiff's Amended Complaint constitute legal conclusions, no response is required. To the extent the factual allegations of Plaintiff's Amended Complaint are consistent with his medical records, they are admitted; otherwise they are denied. CMS is without information or knowledge sufficient to form a belief as to the truth or falsity of allegations regarding statements or actions of third parties outside of its presence, and so such allegations are denied. CMS denies that it established any policy or custom of deliberate indifference to any serious medical need, that any of its employees or agents was deliberately indifferent to any serious medical need or that it violated the Plaintiff's civil rights in any manner. CMS also denies that it was negligent in any manner proximately causing injury to the Plaintiff.

ADDITIONAL DEFENSES

1. Plaintiff fails to state a claim upon which relief can be granted.

2. Answering Defendant was not deliberately indifferent to any serious medical need.
3. Plaintiff fails to state a claim against Answering Defendant for medical negligence.
4. To the extent Plaintiff states a claim for medical negligence, such claim is barred by Plaintiff's failure timely to file, or seek an extension to file, an affidavit of merit pursuant to 18 *Del. C.* § 6853.
5. Plaintiff's claims are barred by the statute of limitations.
6. Answering Defendant was not acting under color of State or Federal law.
7. Plaintiff fails adequately to plead a claim for punitive damages.
8. Answering Defendant provided Plaintiff with medical care that was appropriate and adequate for his conditions and which met the applicable standard of care.
9. Answering Defendant, at all times material to the allegations in the Amended Complaint, acted in good faith and with the reasonable belief, both objective and subjective, that its actions were lawful and not in violation of the rights of Plaintiff under the Constitution and laws of the United States and/or the State of Delaware.
10. Answering Defendant is entitled to good faith immunity.
11. Plaintiff's claims may be barred or limited by the provisions in the United States Civil Rights Act, as discovery may show.
12. Plaintiff's claims may otherwise be barred by 28 U.S.C. §1915.
13. Plaintiff's claims may be barred or limited by contributory/comparative negligence.
14. Plaintiff failed to mitigate his damages.

15. CMS had no policy or custom demonstrating deliberate indifference to Plaintiff's alleged serious medical need.

16. Answering Defendant CMS is immune from liability under State law through the State Tort Claims Act, 10 Del. C. § 4001, *et seq.*

17. Plaintiff's claims against CMS pursuant to 42 U.S.C. § 1983 are or may be barred by the inapplicability of the doctrine of respondeat superior.

18. Plaintiff's injuries, if any, were the proximate result of acts or omissions by persons over whom CMS had no authority or control.

19. Plaintiff's injuries, if any, were the result of a superseding, intervening act or omission by an individual over whom CMS had no control or authority.

20. Plaintiff's claims are barred by failure of service, by failure of service of process, lack of subject matter and/or personal jurisdiction.

21. Plaintiff failed to exhaust his administrative remedies prior to filing suit.

22. Answering Defendant reserves the right to assert additional defenses in the future to the extent warranted by discovery.

WHEREFORE, Answering Defendant Correctional Medical Services, Inc. respectfully requests entry of judgment in its favor and against Plaintiff together with costs and attorneys' fees and such other relief as this Honorable Court deems just and appropriate.

BALICK & BALICK, LLC

/s/ James E. Drnec
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Correctional Medical Services, Inc.

Date: August 7, 2008